IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.878 OF 1975

M/s.Leather Goods House, a Partnership firm registered under the Indian Partnership Act, having its registered office at Gamco House, Tulsi Pipe Road, Dadar, Bombay-28. ..Plaintiff

Versus

Smt.Rekha Avinash Shirodkar, of Bombay, Indian Inhabitant, Proprietor M/s.Rameh Printers, 210, Wadala Udyog Bhawan, G.D. Ambedkar Marg, Wadala, Bombay-31. ..Defendant

Ms. K.C. Nichani, for the Plaintiff.
None for the Defendant.

CORAM: F.I. REBELLO J.
DATE : 2nd September, 2005

ORAL JUDGMENT:

. The plaintiff, a Partnership firm has filed the present suit against the defendant for eviction of the defendant from the suit premises being Unit No.210, Wadala Udyog Bhawan, G.D.Ambedkar Marg, Wadala, Bombay-400 031. It is the case of the Plaintiff that relation of the parties are governed by the Leave and Licence Agreement dated 29th November, 1969. That Agreement was for a period of 11 months commencing from 1st December, 1969. Thereafter there was a

renewal agreement on 1st November, 1970 for further period of 11 months expiring on 30th September, 1971. After 30th September, 1971 there has been no renewal of the Agreement. As the defendant did not vacate the premises as also the defendant was not paying the compensation, correspondence was exchanged. The suit, therefore, was filed for recovery of possession and mesne profits.

2. The defendant has filed written statement, a copy of the same presently is not traceable. The fact that issues were framed must indicate that the written statement was filed. The Counsel for the Plaintiff is directed to place on record a xerox copy of the written statement on record. In the written statement the defendant pleaded that R.A.D. Suit No.340/1369/75 for declaration that the defendant was protected monthly tenant had been filed. It is the case of the defendant that the plaintiff did not require the premises. The same is let out by the plaintiff to the defendant to carry on printing business on payment of rent of Rs.600/- per month. This was done at the request of the defendant. The defendant admits that it was agreed that the sum of Rs.1,000/- will be adjusted from the bills for the work done by an defendant and it was agreed that the defendant should pay atleast Rs.600/- as compensation for the use of the furniture and fixtures. The defendant sets out that by the agreement the plaintiff put the defendant in exclusive use, occupation and possession of the suit premises. It is further set out that the agreement

was renewed from time to time and the plaintiffs have adjusted the sum of Rs.1,000/- as rent of the suit premises and this has been done in the year 1974. After that the plaintiff refused to adjust the same. It is further set out that it was agreed between the plaintiff and the defendant that defendant should be in use and occupation of the premises for minimum 5 years upto the expiry of the last term. The defendant denied that after the first agreement there was no renewal on 1st September, 1971. It is set out that the agreement was renewed for 5 terms of 11 months. The defendant denied that the plaintiffs are entitled to relief as prayed for.

2. Based on the pleadings, the following issues were framed:-

1. Was the agreement of Licence dt. 1st November, 1970 renewed for five terms of eleven months each as stated in para.11 of the written statement.

2. Was the agreement of Licence subsisting on 1st February, 1973.

3. Is the defendant protected as deemed tenant of the suit premises.

4. Is the defendant bound to vacate and hand over possession of the plaintiffs of the suit premises along with

furniture, fittings, etc.

3. Before the evidence of the plaintiff was recorded, learned Counsel for the plaintiff drew the Court's attention to the dismissal of Suit No.RAD.340/1369 of 1975 as also R.A. Application NO.314/SR/1975. Considering that by a separate order dated 18th August, 2005 Issue No.3 was struck off as the issue no longer survive in view of the dismissal of the R.A.D. suit.

4. On behalf of the Plaintiff Manik Lilaram Hiranandani, Partner of the plaintiff has led his evidence. He has also produced documentary evidence in the form of two agreements which are Exhibits P-2 and P-3. The evidence of the plaintiff remains unchallenged. The question, therefore, which arises is what relief the plaintiff will be entitled to considering that Issue No.3 has been struck off. Issue No.3 as set out earlier was issue pertaining to tenancy.

5. Shri Manik Lilaram Hiranandani, P.W.1 has proved Exhibit P-2 and P-3. Once that be the case considering the express language of the Agreement one must go by the Agreement. The Agreements speak of licence and payment of licence fee. That was for a period of 11 months. Initially from 29th November, 1969 and thereafter from 1st November, 1970 till 30th September, 1971. Thereafter there has been no agreement in writing. One may consider the plea of the

defendant in the written statement. What has been pleaded in para.11 is that the agreement was renewed for 5 terms of 11 months. In other words reference is made to the very same agreement. I have no reason to hold that the Agreement Exhibit P-2 and P-3 are not licence agreements. Once that be the case and as licence has not been renewed the continuance of the defendant in the premises would be as a trespasser and consequently the plaintiffs are entitled to a decree for eviction of the defendant from the suit premises.

6. In so far as the prayer for mesne profit is concerned no evidence in support thereof has been led. However, considering that there was a contract between the parties whereby it was agreed that a sum of Rs.1,000/- per month had to be paid the plaintiffs will be entitled for the same sum. On behalf of the plaintiff learned Counsel points out that on account of orders and proceedings a sum of Rs.800/- was deposited in the Small Causes Court upto March, 1992. Considering the above, in my opinion, ends of justice will be met if the defendant is directed from 1st April, 1992 till the date of the suit to pay mesne profits at the rate of Rs.1,000/- per month and thereafter at the same rate till possession. The mesne profits from 1st April, 1992 till judgment i.e. 2nd September, 2005 will work out to Rs.1,52,200/-. The same will carry interest at 6% per annum from the date of the judgment till payment. The plaintiff will further be entitled to mesne profits at the rate of

1,000/- per month from the date of the judgment till recovery.

. In the light of that the following order:-

Suit decreed in terms of prayer clause (a). There will be a further decree in a sum of Rs.1,52,000/- with interest at 6% per annum from 2nd September, 2005 till recovery. The defendant is further directed to pay mesne profits at the rate of Rs.1,000/- per month from 2nd September, 2005 till possession is handed over to the plaintiffs. Costs by the Defendant.

(F.I.REBELLO, J.)